

Special Civil Application No 5838 of 89

Date of decision: 01/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether is His Lordship wishes to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

THE EXECUTIVE ENGINEER
vs
BHOLABHAI NATHABHAI RABARI

Appearance:

MR. K.H. BAXI for Petitioner
MR Y.V. SHAH for Respondent.

Coram : MR.JUSTICE M.R.CALLA
Date: 01-02-1996

ORAL JUDGEMENT

The respondent was appointed on 1/8/1983 as Watchman-cum-Peon in relation to the flood work in the Irrigation Department. The services of the respondent were terminated on 1/5/1985. The respondent raised the industrial disputes and on reference being made, Labour Court, Bhavnagar has passed the award granting relief of reinstatement with full back wages for the entire period vide award dt. 26th April 1989 in Ref. LCB No.463/87.

Against this award dt. 26th April 1989, the present special civil application has been preferred by the Executive Engineer of the District Panchayat (Irrigation Department), Bhavnagar on 8th August 1989. On 8th August 1989 Rule was issued and thereafter on 18th September 1989, following order was passed:-

"Having heard the learned Advocates for the parties, notice as to interim relief is made absolute subject to operation of section 17-B of the I.D.Act. Respondent will have to file an undertaking in this court within ten days from today. Of filing of such affidavit and subject to say of the learned Advocate for the petitioner on the affidavit, the petitioner will be liable to pay future monthly wages to the respondent on the basis of last wages drawn in the month immediately preceding the money of termination i.e. April 1985."

Respondent workman submitted the undertaking on affidavit dt. 20th September 1989 in this court. Learned counsel for the petitioner Mr. Baxi has invited my attention to the order dt. 27th July 1992 passed in Civil Application No. 1474 of 1992 moved in this special civil application which reads as under:-

There is a consensus expressed by the otherside that modification as per Para 2(b) in this application can be accorded. Accordingly order to that effect is passed."

From the consensus expressed by the otherside, modification in terms of Para 2(b) was accorded because the petitioner's case was that the respondent was being paid last drawn salary without taking any work. In para 2(b) in Civil Application No. 1474 of 1992, the petitioner had made the following prayer:-

" To modify the order passed by this Hon'ble High Court dated 18/9/1989 and be pleased to further permit the applicant to give the employment to the opponent at the prevalent rate till the applicant needs the services of the workman.'

The modification of the order dt. 18th September 1989 was sought to the effect that the employment be given to the respondent at the prevalent rate till the petitioner company needs the services of the workman.

There is no dispute that accordingly respondent workman was reengaged on 27th July 1992 and since then he is continued in service.

So far as challenge to the award is concerned, I find that the labour court has come to a definite finding that having worked in the department from 1/8/1983 to 1/5/1985, the respondent had completed more than 240 days of his working and at such he is entitled to protection of Sec.25F of Industrial Disputes Act. The case of the present petitioner that the termination was in terms of the contract and therefore, it was not the case of retrenchment within the meaning of Sec.2(00) as amended lateron, has not been believed. No terms of contract could be proved by the petitioner before the Labour Court and the Labour Court has found that the petitioner was not entitled to benefit of Sec.2(00) in the facts of this case. No documentary evidence contemporaneous or otherwise was adduced to show that the appointment was given for a limited period or that the service was to terminate on 1/8/1995 by eflux of time or that in accordance with terms of the contract, service had to be terminated on 1/5/1985. Merely by making bare statement that he was engaged in relation to the Flood Work, it cannot be concluded that his appointment was coterminous so as to last only till existence of flood work. The flood work is a part and parcel of the Irrigation Department and merely because an employee is appointed and given the work in relation to the flood work, it cannot be concluded that his services must be coterminous with the lasting of the flood work only. The Labour Court has considered all these aspects in detail with reference to the provisions of Sec.2(00) of I.D.Act and the learned counsel for the petitioner has not been able to point out any material on the basis of which the finding recorded by the Labour Court can be disturbed. Therefore, so far as relief of reinstatement is concerned, there is no question of any interference as admittedly the provisions of Sec.25F of I.D.Act were not complied with by the Department while terminating the service of the respondent on 1/5/1985. With regard to the question of back wages, it is no doubt the fact that the respondent workman was reengaged in the service only on 27th July 1992 but the affidavit dt. 20th September 1989 filed by the respondent workman in this court does not show that he made any efforts for any employment after termination and he has not contended that he remained unemployed. Further Mr. Baxi has appointed out from the pleadings of Civil Application No. 1474 of 1992 that after this court's order dt. 18th September 1989, with reference to Sec.17-B of I.D.Act, the respondent

workman was paid wages on the basis of last wage drawn by him for April 1985 and since 27th July 1992, the respondent workman is in active service till date. In this view of the matter, the question of back wages is relevant only for the purpose of a period from May 1985 till September 1989. Since the respondent workman has not been able to show that he had made any efforts for gainful employment during enforced period of idleness and looking to the entirety of the facts and circumstances of this case, I do not find it to be a fit case for sustaining the award in relation to the full back wages for the entire period, when the workman has not worked from May 1985 to September, 1989, and therefore, it will be too harsh and unjust to the District Panchayat, if it is called upon to pay the idle wages for a period over four years.

Accordingly this special civil application is partly allowed. The relief of reinstatement as granted by the Labour Court in the impugned award is upheld. The respondent workman shall not be entitled to any back wages from May 1985 till 18th September 1989 i.e. the date on which the Division Bench passed the interim order and to that extent, the impugned award shall stand modified. In case the respondent has not been paid the monthly wages after 18th September, 1989, he shall be entitled to the monthly wages for the period beyond 18th September, 1989 in terms of the order passed by the Division Bench on 18th September, 1989 and it will be open for both the sides to settle accounts for this period. The respondent workman was taken back in service by way of reengaging him in pursuance of this court's order dt. 27th July 1992 passed in Civil Application No. 1474 of 1992 and he will be deemed to be continuing in service as if he had not been terminated from service on 1st May 1985. Of course, he will be entitled to back wages only to the extent as ordered above and no back wages for the period from 1/5/1985 till 18th September 1989. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.

CCS -----